

must be taught or suggested by the prior art. M.P.E.P. § 2143.03 (citing In re Royka, 490 F.2d 981 (C.C.P.A. 1974)).

Independent claim 25 recites a remediation method in response to a biological attack on a facility. The claimed method includes the steps of conducting remediation activities at a site where a biological attack may have occurred; monitoring weather conditions at the site; and establishing a plurality of conditions of readiness based on an increasing likelihood that adverse weather conditions may impair the remediation activities at the site. The step of establishing the plurality of conditions of readiness further comprises the step of establishing restrictions on the remediation activities relating to particular conditions of readiness.

As admitted by the Examiner, “neither Rupp nor Stewart et al. teach that local weather conditions should be taken into account when setting up or implementing remedial activities at a site where a biological attack may have occurred.” (Office Action, page 3). Therefore, Rupp and Stewart et al., even if combined as suggested by the Examiner, fail to teach or suggest the claimed step of monitoring weather conditions at the site or the claimed step of establishing a plurality of conditions of readiness based on an increasing likelihood that adverse weather conditions may impair remediation activities at the site.

Instead of considering the teachings of the references, the Examiner substitutes impermissible hindsight and concludes:

For one responsible for the implementation of remediation efforts at a potential biological site, it would have been obvious to one of ordinary skill in the art to consider weather conditions at the site because, as discussed above, Rupp teaches that the support zone for a HAZMAT area should be portable (Office Action, page 4).

“Portable” and “monitoring weather conditions” are not synonymous, and one does not suggest the other. Instead, the references cited by the Examiner fail to suggest the claimed method including conducting remediation activities at a site where a biological attack may have occurred, monitoring weather conditions at the site, establishing a plurality of conditions of readiness, and establishing restrictions on the remediation activities. See In re Kotzab, 217 F.3d 1365, 1371 (Fed. Cir. 2000) (“In this case, the Examiner and the Board fell into the hindsight trap.”).

The subject matter of independent claim 25 would not have been obvious to one of ordinary skill in the art in view of the references cited by the Examiner.

Independent claim 28 also recites a remediation method in response to a biological attack on a facility. The claimed method comprises the steps of conducting remediation activities at a site where a biological attack may have occurred; monitoring weather conditions at the site, wherein the weather conditions include lightning; and establishing at least one condition of readiness based on a likelihood that the lightning may impair the remediation activities at the site.

Neither Rupp nor Stewart et al. teach or suggest the claimed step of monitoring weather conditions at the site or the claimed step of establishing at least one condition of readiness as recited in claim 28. In addition, neither Rupp nor Stewart et al. mention or consider lightening. Therefore, the subject matter of independent claim 28 would not have been obvious to one of ordinary skill in the art in view of the references cited by the Examiner.

Independent claim 30 recites a remediation method in response to a biological attack at a site. The method includes the steps of establishing an exclusion zone with

restricted access thereto; establishing a contamination reduction zone adjacent to the exclusion zone; establishing a support zone adjacent to the contamination reduction zone; and monitoring weather conditions at the site. The contamination reduction zone has located therein means for decontaminating personal protective equipment worn by a person exiting the exclusion zone. In addition, the support zone is a clean zone and includes dressing facilities and equipment.

As admitted by the Examiner, “neither Rupp nor Stewart et al. teach that local weather conditions should be taken into account when setting up or implementing remedial activities at a site where a biological attack may have occurred.” (Office Action, page 3). Therefore, Rupp and Stewart et al., even if combined as suggested by the Examiner, fail to teach or suggest the claimed step of monitoring weather conditions at the site of a biological attack.

In addition, Rupp fails to disclose a biological attack, fails to disclose both a contamination reduction zone and a support zone, and fails to disclose means for decontaminating personal protective equipment in a contamination reduction zone. Instead, Rupp discloses a hot zone, a warm zone, and a cold zone around a hazardous material site (col. 1, lines 20-31). The three zones disclosed by Rupp do not teach or suggest all of the claimed zones.

The “single entrance way” of the hot zone in Rupp does not disclose a contamination reduction zone. The entrance way, for example, does not contain “means for decontaminating personal protective equipment.” Instead, the clean up stations of Rupp are located within the “hot zone,” as shown in Fig. 4, and not in a “contamination reduction zone” (col. 4, lines 40-42). Further, the location of the clean

up stations of Rupp does not disclose the "contamination reduction zone" because the contamination reduction zone is required to be "adjacent to said exclusion zone." As shown in Fig. 4, the clean up stations are inside the hot zone.

Stewart et al. does not make up the noted deficiencies of Rupp.

The subject matter of independent claim 30 would not have been obvious to one of ordinary skill in the art in view of the references cited by the Examiner.

Dependent claims 26-27, 29, and 31-35 are patentable for at least the same reasons as the respective independent claims 25, 28, and 30. In addition, the dependent claims recite weather conditions and conditions of readiness improperly ignored in the Office Action.

Applicants respectfully submit that claims 25-36 are in condition for allowance. Applicants respectfully request reconsideration of this application and the timely allowance of claims 25-36.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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